

BEFORE THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	DISCIPLINARY BOARD DOCKET
PETITIONER	:	NO. 36 DB 2025
V.	:	
	:	ATTORNEY REG. NO. 60474
JOHN W. PAUCIULO, ESQUIRE,	:	(CHESTER COUNTY)
RESPONDENT	:	
	:	

OBJECTIONS OF THE RESPONDENT, JOHN W. PAUCIULO'S, TO THE EXPERT
WITNESS' REPORT DATED JULY 18TH, 2025 OF RICHARD BOOTH

The Respondent, John Pauciulo, by this counsel, Samuel C. Stretton, Esquire, hereby objects to the Report of Expert Witness, Richard A. Booth, submitted on July 18th, 2025.

The first objection is because Mr. Booth was held out as a Securities and Exchange expert yet now has opined at the end of his report on issues of legal conflict of interest and professional responsibility. His resume and background are not in the area of legal ethics or legal conflicts. Mr. Pauciulo objects and states that Mr. Booth's report should be limited to his opinions on securities and exchange law and not on issues of legal ethics for which he is not an expert.

Second, the Respondent objects to this Report since it is far beyond a normal expert report, but is more like a closing argument of an advocate, summarizing all the evidence. Most of what he says has not and will not be proven and there are in many instances no proper citation.

The report does not identify with specificity the materials by which Mr. Booth formed his opinion. In footnote 1 of the report, he states he has reviewed exhibits from the Office of Disciplinary Counsel, 1-84, but the report does not include any specific footnotes or references to sources as to which facts, such as deposition testimony, affidavits, and the like. Many of the Office of Disciplinary Counsel's exhibits are newspaper articles and other secondary material, such as pleadings filed by the U.S. Securities and Exchange Commission. Pleadings are not legal findings of fact. The Petition for Discipline is not a finding of fact. They are the allegations of the parties. Much of Mr. Booth's opinion is based on these pleadings and allegations, but not on factual findings. Further, the newspaper articles should not be the basis for any kind of factual determination.

Therefore, the Respondent objects and asks that this report be stricken, since Mr. Booth's expert report is based on allegations and pleadings and newspaper articles, which are not valid facts.

The Respondent objects to Mr. Booth's expertise, since in reading Mr. Booth's Curriculum Vitae, Mr. Stretton does not see anything indicating that he has had direct experience in representing companies issuing securities in reliance on Regulation D and related exemptions from the registration

requirements of the Security Act of 1933. Mr. Booth may be academically knowledgeable, but he has had no experience, according to his resume, with such legal representation, and therefore, would not be qualified to express an opinion on the actual practice of law.

Mr. Stretton also objects to specific issues in Mr. Booth's report. On page 2 of his report, Mr. Booth states:

"In essence, Par Funding provided short-term loans to small businesses - merchant CASH advances (MCAs) - at substantial (if not exorbitant) interest rates sometimes as high as 400% ---".

This statement is not accurate. No such short-term loans were done. Instead, as described in the Respondent's Answer, and also in PAR Funding materials, PAR Funding operated a factoring business. That means that PAR Funding purchased accounts receivable and/or future accounts receivable in exchange for cash. Factoring is a well-established form of financing, but it is different from lending and generally is not subject to state regulations. Statements made by the alleged expert concerning excess or exorbitant returns and annual percentage rates are not accurate. It is also highly prejudicial to the Respondent. It is just false and not true. The expert report should be stricken since the facts the expert is basing his opinions on are not accurate and there were no short-term loans.

Also on page two, in the last paragraph, Mr. Booth references investigations conducted by regulators in New Jersey and Pennsylvania regarding Mr. Vagnozzi's role in the offering and sale of promissory notes issued by PAR Funding and includes reference to the Respondent and supposed dinner seminars featuring videos in which the Respondent appeared. Again, that is incorrect. Consent Orders entered by the New Jersey and Pennsylvania regulators make no reference to the Respondent or any services he may have provided to Mr. Vagnozzi in connection with Mr. Vagnozzi's role in selling promissory notes issued by PAR Funding. Further, the Respondent was not a party to any of these state actions. Unfortunately, Mr. Booth has misstated the facts and conflated them and made them highly misleading and prejudicial against the Respondent when, in fact, his underlying factual basis is totally incorrect and false. Mr. Pauciulo, the Respondent, was never a party to those actions.

Further, on page 3, Mr. Booth again references the Pennsylvania and New Jersey enforcement actions in the first full paragraph. In there, again, he misstates Mr. Pauciulo, the Respondent's, role in the sales methods. He misstates the efforts employed by Mr. Vagnozzi were with the help of Mr. Pauciulo. In fact, Mr. Pauciulo was not involved in those periods of exchanged actions and was not involved in Mr. Vagnozzi's sale of promissory notes until well after Mr.

Vagnozzi began such activity. The Respondent's role then was limited to the offering of advice on the role of a finder versus a broker. Further, Mr. Booth incorrectly characterizes the nature of the state regulatory action taken against Mr. Vagnozzi. These statements are false, inaccurate and again undermine the basis for his expert report.

Even more importantly was the error on page 3, in the second full paragraph where Mr. Booth states:

“In apparent anticipation of the Pennsylvania and New Jersey enforcement actions, Par Funding, Vagnozzi, and Pauciulo, devised a way to avoid sales to individual investors by restricting sales to the so-called agent funds”.

The expert does not provide any reference or source of fact to support that statement. In fact, the statement is totally false and untrue and has no factual basis. Mr. Pauciulo never represented PAR Funding and never conferred with or met with any representatives of PAR Funding to discuss how PAR Funding might offer its promissory notes. It never happened. It is a falsehood. These misstatements and inaccuracies are highly prejudicial to the Respondent and demonstrate that this expert's report should be stricken since it is not based on evidence.

Further, the statements in the report restricting sales to so-called agent funds is not accurate and not true. The misstatement is repeated again on page 8 of the expert report.

Also on page 3, there is another falsehood. The expert states:

"Pauciulo devised a way to avoid sales to individual investors by restricting sales to so-called Agent Funds".

In the first paragraph at the top of page 4, the expert states:

"Pauciulo played an even more important role under the new scheme".

These statements have no basis in fact, and there is no reference in the expert report as to the source of these false statements. The characterization of the Respondent and the reference to a scheme are prejudicial, false, and not based on any factual information.

On page 13 of the expert report, his conclusion consists of four paragraphs and it continues on to page 14. The conclusions restate and are based upon the many misstatements and inaccuracies described above. The expert is basing it on allegations, not factual findings. He is misreading the conclusions of the New Jersey and Pennsylvania decisions. Therefore, his conclusions are not based on accurate information. The expert opinion should not be allowed to stand or be submitted. Also, at the bottom of page 13, the expert goes far away from his SEC expertise and talks about legal ethics and professional duties and conflicts. His opinion on legal ethics

should have no basis in this report, and this expert is not an expert on that area. One can see also at the top of page 13 where the expert speaks about Mr. Pauciulo violating professional ethics while representing Vagnozzi and acting as an agent for PAR. Mr. Pauciulo never represented or acted as an agent for PAR, and this conclusion is far beyond his expertise. He also talks about conflicts in the first full paragraphs right before the conclusion, and again, that is far beyond his expertise.

These objections are not just to weight, but to the fundamental problem of this expert report. This report appears to have been taken from allegations in the Petition for Discipline, the exhibits of the Office of Disciplinary Counsel and SEC petitions. But not based on findings of fact and conclusions of law. They are just not accurate. As a result, this report should be stricken.

Under Pennsylvania Rules of Evidence, Rule 702, an expert has to be qualified by knowledge, skill, and training. This expert has no training, knowledge, or skills in the area of professional ethics, and therefore, should be precluded from giving such opinions, particularly such as on pages 13 and 14.

The expert's opinion has to be based on facts, not allegations, not newspaper articles, not allegations in the Petition for Disciplines or SEC petitions, but unfortunately,

his report is based on allegations not findings of fact. The Pennsylvania Rules of Evidence, under Rule 703, entitled *Basis for an Expert's Opinion Testimony*, the expert can base an opinion on facts or data in a case that the expert has been made aware of or personally observed. In this case, there are no such facts. Mr. Booth is relying his conclusions on allegations, but not proven facts. Further, he embraces the ultimate issue in terms of the discipline. Though there has been some broadening of that under Pennsylvania Rules of Evidence, Rule 704, he does more than embrace an ultimate issue. He gives an opinion on the ultimate issue. That is prohibited.

Under Pennsylvania Rules of Evidence, Rule 705, about facts or data underlying an expert opinion, the Rule states as follows:

"If an expert states an opinion, the expert must state the facts or data on which the opinion is based," see Pennsylvania Rules of Evidence, Rule 705.

The expert fails to do that in this case. There are so many conclusions that have no basis in fact or reality. The expert report is not under Federal Rules of Evidence, but under Pennsylvania Rules of Evidence. In the comments, the Pennsylvania Rules of Evidence, Rule 705, notes as follows:

"--- The court reasoned that requiring the proponent of an expert opinion to clarify for the jury the assumptions upon which the opinion is based avoids planting in the juror's mind a general statement likely to remain with him in the jury room when the

disputed details are lost. Relying on cross-examination to illuminate the underlying assumptions as federal rules of evidence does may further confuse jurors struggling to follow complex testimony," see comments to Pennsylvania Rules of Evidence, Rule 705.

The comment then notes that there must be a disclosure of the facts used by the expert in informing an opinion. This opinion does not, as shown above, do that on key findings and statements which are extremely prejudicial to Mr. Pauciulo and which are also incorrect.

WHEREFORE, the Respondent, John Pauciulo, Esquire, by his counsel, Samuel C. Stretton Esquire, respectfully requests that the expert report be stricken, Mr. Booth's testimony not allowed and respectfully requests this Honorable Hearing Committee provide an in-person argument and a hearing on all these issues.

Respectfully submitted,

s/Samuel C. Stretton
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CERTIFICATE OF COMPLIANCE

I, Samuel C. Stretton, Esquire, certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

July 23, 2025
Date

s/Samuel C. Stretton
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CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the
Objections in the captioned matter upon the following persons in
the manner indicated below.

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Respectfully submitted,

July 23, 2025

Date

s/Samuel C. Stretton

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